

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

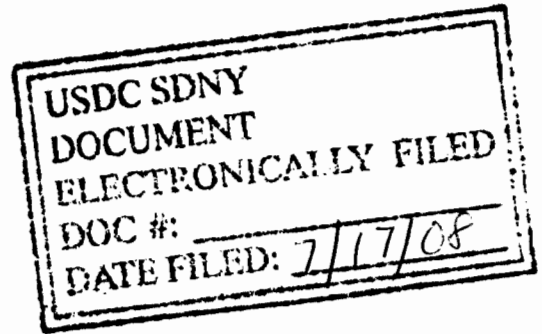
ESTHER EHRENFELD and ASHER  
EHRENFELD,

Plaintiffs,

- against -

UNITED STATES OF AMERICA and  
CITY OF NEW YORK

Defendants.



ORDER

07 Civ. 8559 (PKL)

**LEISURE, District Judge:**

WHEREAS the Government has requested, in a letter attached to this Order, to stay the pending motions in this action until the conclusion of discovery on August 31, 2008; and

WHEREAS the City has requested, in a letter attached to this Order, to withdraw its pending summary judgment motion and reserve the right to refile the motion following the completion of discovery.

IT IS HEREBY ORDERED:

The City's pending motion, along with plaintiffs' opposition thereto, is withdrawn (Docket Nos. 9-14). Plaintiffs' motion, which the Court notes is not officially docketed, is stayed until August 31, 2008.

SO ORDERED.  
New York, New York  
July 17, 2008

A handwritten signature in black ink, appearing to read "Peter H. Lerone", written over a horizontal line.

U.S.D.J.



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

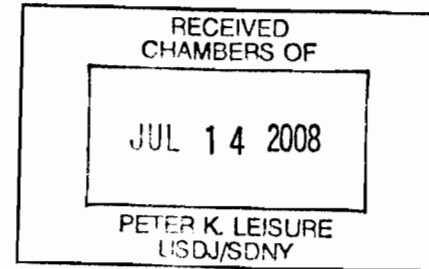
*86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007*

July 11, 2008

**VIA HAND DELIVERY**

Hon. Peter K. Leisure  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1910  
New York, New York 10007

Re: Ehrenfeld v. United States  
07 Civ. 8559 (PKL)



Dear Judge Leisure:

This Office represents the United States in the above-referenced slip-and-fall action, brought by Plaintiffs Esther and Asher Ehrenfeld ("Plaintiffs") against both the United States and the City of New York ("City"). We submit this letter to request a stay of Plaintiffs's Motion for Issue Determination and Preclusion as Against the United States, filed on June 24, 2008, on the grounds that such motion is premature because discovery is still ongoing. Accordingly, the United States respectfully requests permission to address the Plaintiffs's motion after August 31, 2008, the current date for the close of discovery.

On May 9, 2008, the City of New York filed a motion for summary judgment on the basis of Section 7-210(b) of the Administrative Code of the City of New York, effective September 14, 2003, which provides that liability for injuries arising from a defective sidewalk is shifted from the City to the owner of the real property abutting that defective sidewalk. *See* N.Y.C. Admin. Code § 7-210. Thus, the City sought a determination that it was not liable for Plaintiffs's injuries because it was not the owner of the property abutting the alleged defective sidewalk where Plaintiff allegedly fell. The United States did not oppose the City's motion.

On June 24, 2008, Plaintiffs responded to the City's motion by arguing that the City's motion is premature as discovery is still ongoing, but, that if the City's motion is granted, the Court must then preclude the United States from raising the defense of sovereign immunity against the liability shifting provisions of Section 7-210. Further, Plaintiffs requested that the Court find that "none of the limited exemptions found in the Federal Tort Claims Act apply in this case, and the United States' sovereign immunity from private tort actions is thus waived in this case." (Pls.'s Mem. at 10, Part III.) Plaintiffs's arguments, however, are premature for the very same reasons it opposed the City's motion — discovery is still on going.

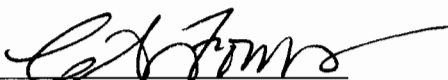
Accordingly, the United States respectfully requests that the current motions be stayed until after August 31, 2008. A stay would enable the parties to address all the legal and factual issues raised by this case at once, rather than in a piecemeal fashion.

Thank you for your consideration.

Respectfully submitted,

MICHAEL J. GARCIA  
United States Attorney  
for the Southern District of New York

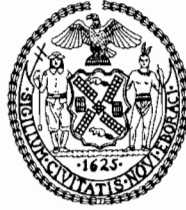
By:

  
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**Via First Class Mail and Facsimile**

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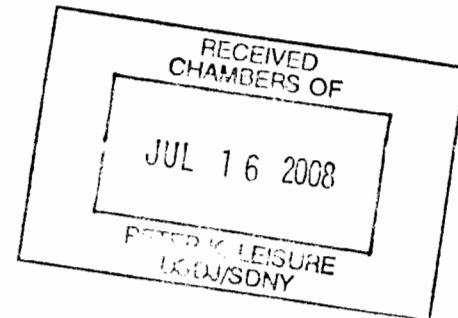
THE CITY OF NEW YORK  
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July 11, 2008

Honorable Peter K. Leisure  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1910  
New York, New York 10007



Re: **Ehrenfeld v. The United States of America, et al.**  
Docket No. 07 cv 8559 (PKL)  
City File No.: 2007-032064

Dear Judge Leisure:

This office represents The City of New York (the "City") in the above matter. On May 29, 2008, the City filed a motion for summary judgment, pursuant to section 7-210(b) of the Administrative Code of the City of New York. Plaintiff opposed the motion on the ground that it is premature and filed a motion, arguing that if the City's motion is granted, the Court must preclude the United States of America from raising the defense of sovereign immunity.

It has come to this office's attention that counsel for the United States of America has requested a stay of the motions until after the completion of discovery on August 31, 2008, so that all factual and legal issues can be addressed at once, rather than in a piecemeal fashion. The City agrees that the motions should be decided together at the conclusion of discovery and for that reason, wishes to withdraw its pending motion and reserve the right to refile it after discovery is complete.

Thank you for your consideration.

Respectfully yours,

  
Craig Koster  
Assistant Corporation Counsel

cc: Gene L. Chertock, Esq.  
Carolina A. Fornos, A.U.S.A.